IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

Crl.MC.No. 1355 of 2007()

CC.369/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, CHITTUR

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PETITIONER:

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1. VIJAYAN, S/O.N.K.VELANTHEYYAN,
   PLAVINICKAL VEEDU, OZHUVUPARA, PALLASSENA,
   PALAKKAD DISTRICT.

2. GOPALAKRISHNAN, S/O.N.K.VELANTHEYYAN,
   OZHUVUPARA, PALLASSENA, PALAKKAD DISTRICT.

3. CHENTHAMARAKSHAN, S/O.N.K.VELANTHEYYAN,
   KAITHARAVU KALAM, VANDITHAVALAM,
   CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REP. BY THE
   SUB INSPECTOR OF POLICE, PUDUNAGARAM POLICE
   STATION, PALAKKAD DISTRICT, REP. BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SAROJINI, W/O.CHANDRAN,
   NEDUMPULLI KALAM, OZHUVUPARA, PALLASSENA,
   PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1355 OF 2007

Dated this the 30th day of May, 2007

ORDER

The petitioners are accused 1 to 3 in a prosecution launched under Secs.341, 323 and 506(1) read with Sec.34 of the IPC. Cognizance was taken by the learned Magistrate on the basis of a final report submitted by the police, a copy of which is produced as Annexure-C. Investigation commenced on the basis of Annexure-B – First Information Statement which led to the registration of Annexure-A – FIR. Altogether, 5 accused persons are shown as accused in Annexures-A and B. But, after investigation, the police has filed charge sheet only against the petitioners herein. It is stated that the petitioners have appeared before the learned Magistrate. They have come to this Court with this petition to invoke the powers under Sec.482 of the Cr.P.C. to quash the proceedings.

2. What are the reasons? The learned counsel for the

petitioners contends that though it is true that the respondent/ complainant had come to the house of the accused on the date in question, all other allegations are totally false and non-existent. Convenient allegations have been raised with the only intention of vexing and harassing the petitioners. The learned counsel for the petitioners specifically points out that though the allegations in the First Informations Statement is that the documents were torn and destroyed by fire, the present allegation in the final report is only that they were torn and destroyed. Similarly, though there were five accused persons initially, two of them have been dropped from the array of parties conveying unmistakably that the initial version of the complainant has not been accepted even by the police.

3. I have considered the contentions. I must remind myself the nature, quality and contours of the jurisdiction of this Court under Sec.482 of the Cr.P.C. It is an extraordinary inherent jurisdiction which is available. It is to be invoked in exceptional cases only and that too in aid of justice to prevent the miscarriage of justice and abuse the process of the court. Incongruity in the prosecution case, contradiction between the witnesses etc., are not by themselves sufficient to persuade this

court to invoke such jurisdiction under Sec.482 of the Cr.P.C.

4. I have been taken through Annexures-A, B and C in detail. I have been apprised of the background of the dispute between the parties. But having considered all this, I am of opinion that no sufficient ground to justify the invocation of the powers under Sec.482 of the Cr.P.C. have been shown to exist. Lest, it might prejudice the interests of the parties, I am not proceeding to narrate the averments in greater detail or consider the contentions on merits in extenso.

5. I need only mention that it is for the petitioners to raise all these contentions before the learned Magistrate in the course of the proceedings and for the learned Magistrate to take appropriate decisions on such contentions. I have not intended to express any opinion on merits. I only take the view that sufficient circumstances to invoke the powers under Sec.482 of the Cr.P.C. are not shown to exist.

6. Finally, the learned counsel for the petitioners submits that great prejudice, hardship and loss would result if the personal appearance of the petitioners were ritualistically insisted by the learned Magistrate on all dates of posting. The petitioners can apply for exemption and I find no reason to

assume that the learned Magistrate shall not consider such application on merits and favourably.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge